

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

Roadlink Workforce Solutions, LLC.

Employer

and

Case 19-RC-15320

International Brotherhood of Teamsters, Local
Union 117 ¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board ("the Board"). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record² in this proceeding, the undersigned makes the following findings and conclusions.³

I. SUMMARY

Petitioner filed the instant petition seeking to represent all lumpers and team leaders employed by the Employer at the Unified Grocers' Distribution Center located in Tukwila, Washington.⁴ The Employer is engaged in the business of providing third party labor for the grocery industry and operates in numerous states, including Washington State. In the Puget Sound area of Washington, the Employer has contracts with three customers, Fred Meyer in Puyallup, Safeway in Bellevue and Auburn, and Unified Grocers ("Unified") in Tukwila. The Employer's lumpers unload, sort and repack freight arriving at the three customers' respective grocery warehouses. However, the only location involved herein is the Unified warehouse.

The primary issue in this proceeding is whether the team leaders at Unified should be included in the unit. The Employer contends that the team leaders at all its Puget Sound work locations possess the authority to assign, responsibly direct, discipline, and/or to effectively recommend discipline/discharge and, thus, fall within the definition of supervisor as that term is defined in Section 2(11) of the Act. Petitioner contends the team leaders do not possess indicia of supervisory authority and therefore are properly included in the unit.

¹ The names of both parties appear as amended at hearing.

² The Employer and the Union timely filed briefs, which were duly considered.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁴ Actually, the petition referred to the team leaders as "leads."

Based on the record evidence and the parties' arguments at hearing and in their respective briefs, I conclude the Employer has failed to carry its burden of establishing that the team leaders possess indicia of supervisory authority. Accordingly, I am directing an election in a unit, described below, which includes the lumpers and team leaders.

In the following section, I have set forth the relevant record evidence describing the Employer's operations and the team leaders purported supervisory authority. Following that section, I have set forth an analysis of the Board's legal standards for determining supervisory status and the application of those standards in this case before me. Thereafter, I have set forth the details of the directed election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE⁵

A. Background on the Employer's Operations

The Employer has been in operation since about 2007. While the instant petition covers the Employer's operations at Unified's warehouse located in Tukwila ("the warehouse" or "Unified warehouse"), the Employer is engaged in similar operations for Fred Meyer and Safeway at their respective warehouses. The record reveals that the Employer's operations at the Fred Meyer, Safeway and Unified sites vary as the Employer will adapt its operations to "mirror" those customers' distinctive operations. This allows the Employer to better meet the customer's respective and distinctive needs. As for Unified, its operations are additionally distinguishable, as it supplies various independent grocers with grocery items unloaded at Unified's warehouse, whereas the Employer's respective operations at Fred Meyer and Safeway concern only one grocer.⁶

More generally, the Employer's operations entail providing labor services at customers' grocery warehouses, and those services are performed solely in the dock area, as the lumpers do not perform work in the warehouse proper. In the dock areas, the Employer's employees unload and sort incoming deliveries from various suppliers. At the Unified warehouse, this includes unloading and sorting Unified freight. The sorting process allows for items to be moved to appropriate locations in the customers' warehouses. Once the incoming freight is unloaded and sorted, Unified employees move the incoming freight from the unloading dock to the appropriate location in the warehouse. In some instances the lumpers have to repack the incoming items to meet Unified storage standards, e.g., incoming pallets are stacked too high to fit on the warehouse shelving. In sum, the loaders remain in the dock areas during the course of their workday.

⁵ I note the Employer presented testimony from its Regional Operations Manager, Unified Site Manager, Assistant Unified Site Manager/team leader and the Safeway Auburn Site Manager. Petitioner presented testimony from two Unified team leaders.

⁶ I take administrative notice that the parties have recently entered into two Board stipulated election agreements in Cases 19-RC-15318 and 19-RC-15319 covering the Employer's separate operations at Fred Meyer and Safeway. Both stipulated election agreements exclude "team leaders" and "assistant team leaders" from the unit. The Employer contends that the team leaders' exclusion in those election agreements should be persuasive in supporting the Employer's contentions here. Petitioner, on the other hand, contends the circumstances surrounding the Employer's operations at the Unified warehouse are significantly different and, therefore, a similar election stipulation was not warranted in this case. While there is no disputing the Employer's operations differ between Fred Meyer, Safeway and Unified, the nature, extent, and significance of those differences may only be assessed by closely reviewing the record and the parties' arguments at the hearing and in their respective briefs in the instant case before me. Accordingly, this decision is based on the record evidence and the parties' arguments both at hearing and in their briefs.

In the Puget Sound area, the Employer places a Site Manager at each warehouse to oversee its operations. The Site Manager for the Unified warehouse is Miguel Farfan⁷ who reports to a Regional Operations Manager. Farfan has an assistant manager, Rafael De Leon, who also performs lumping/team leader duties for about half his work time as needed.⁸ The other half of his day is spent in an office area assisting Farfan. Farfan and DeLeon occupy an office at the Unified warehouse, while the team leaders work in the dock area, where they have a podium of sorts where they do paperwork.

The Employer's operations at the Unified warehouse mirror Unified's operations. Specifically, the operations are divided into "perishables" and "grocery" sides. The perishable side has four departments (meat, deli, frozen and produce) while the grocery side has two departments (grocery and repack). The perishable departments are located in a separate building apart from the grocery and repack departments. While the record does not specify the precise distance between the perishable and grocery side operations, the record reveals that the entire Unified complex, including the warehouse, comprises about one million square feet, all on one site.

The Employer employs seven team leaders ("team leaders") at the Unified warehouse. Those team leaders are: Angel Anguiano (Grocery); German Alesandro (Repack); Antonio Sanchez (Grocery), Miguel Lizarraras (Produce); Hector and Gerardo Santos (sharing three departments: Deli, Meat and Frozen); and Rafael DeLeon (substitute team leader and assistant to Farfan). Further, the Employer employs approximately 18 lumpers at the Unified warehouse.⁹

The Employer uses a two shift operation to provide lumping services. The first shift starts at approximately 1 or 2 a.m. for the perishable departments. The Employer has assigned three team leaders and approximately nine lumpers to this initial shift. Another shift starts at 5 or 6 a.m. and covers the grocery and repack departments. The Employer has assigned two team leaders and nine lumpers for the grocery and repack departments, with a third team leader commencing work at 11 a.m. to handle any overflow or late arriving deliveries for the grocery and repack side. In addition, De Leon acts as a team leader as needed to fill in for any team leaders' vacations and absences. The team leaders report to Site Manager Farfan, who typically works Monday through Friday from 8 a.m. to 4 p.m.

Most of the lumpers and team leaders work a Monday through Friday schedule, although some employees work on Sundays for perishable items. The Employer rarely operates on Saturdays. The lumpers are paid on an hourly basis which is dependent on a revenue sharing formula which, in turn, is based on the fees the Employer collects for each day of work. The record does not show what a typical wage level would be (there are minimums). The team leaders are

⁷ The parties stipulated that Farfan is a 2(11) supervisor. Based on the stipulation and the record evidence that Farfan hires and discharges, I find that he is a supervisor within the meaning of Section 2(11) of the Act and, therefore, shall exclude him from the unit.

⁸ De Leon is also referred to as a Site Manager in training. He spends half his time acting as a team leader and the remainder assisting Site Manager Farfan, learning the position. The Employer pays DeLeon an hourly wage rate and there is no record evidence regarding whether he possesses indicia of supervisory authority as an assistant manager, or as a trainee in that position. Indeed, the parties did not address DeLeon's assistant manager duties and responsibilities and the implications that would have on whether he should be included or excluded from the unit. In light of the foregoing and the record as a whole, I shall include DeLeon in the unit found appropriate below, as he is a management trainee and part-time team leader. See *Neisner Bros., Inc.*, 200 NLRB 935 (1972).

⁹ Record testimony indicates an employee complement between 15 and 24. However, record exhibits show 18 lumpers.

also paid an hourly wage, but that wage is about \$2 greater than the lumpers wage rate. The Employer pays Farfan a salary.

Unified serves a large number of independent groceries but the volume of Unified's business has declined over the past few years due to a number of factors, including the recent economic recession and consumers gravitating to "big box" stores, resulting in lower sales for independent grocers as a whole. Due to these factors, the Employer estimates its work for Unified has declined approximately 30% in the past few years. This decline has manifested itself in a lack of hiring at the Unified site, a lack of overtime and a general decline in the work week for the employees.

The nature and extent of work performed each day by the lumpers and team leaders is largely determined by the schedule of perishable and grocery deliveries provided to the Employer by Unified at the beginning of a given day. Those schedules vary depending on the day of the week, unexpected delays in deliveries, early and/or unscheduled deliveries.¹⁰

The amount of freight contained in a given delivery is usually known in advance, which allows the Employer to determine how much labor is involved to unload a given shipment on the delivery schedule. However, some freight loads require extra labor due to partial loads that are not strategically loaded on the truck for ease of offloading the portion delivered to the Unified warehouse.

B. Team Leader Duties and Responsibilities

1. Overview

The team leaders report to Farfan's office at the beginning of their shifts and obtain a briefcase which contains a palm pilot and paperwork including work schedules and forms for discipline. The three perishable team leaders then meet briefly with the lumpers to sort out the day's work and the actual work day commences at 1 or 2 a.m.

Team leaders appear to have been promoted from the ranks and, contrary to any assertion, do not appear to need and/or possess prior sales experience to perform their duties and responsibilities. Rather, the record reveals team leaders should be familiar with the lumping process, be able to communicate with the delivery drivers, process paperwork, and effectively operate the palm pilot each of them is assigned. Indeed, all witnesses testifying in this matter were promoted from the lumpers to their positions as team leaders, Site Managers or higher.

With respect to unloading, sorting, and repacking of freight, the record reveals that when an incoming freight vehicle arrives, a team leader contacts the driver and arranges for the unloading if the driver decides to utilize the Employer's lumping services. Thus, while the Employer contracts with Unified to perform lumping services at the Unified warehouse, it is the company or truck driver delivering the freight who actually pays for the Employer's lumping services. Employer has a set fee schedule for various types of loads and the team leader uses that schedule to charge the incoming driver with the appropriate lumping fee. The team leader also collects the fee from the driver in the form of cash, check, by account credit, credit card, or other means.¹¹ When a load does not fit within a particular scheduled fee, the team leaders still

¹⁰ Unscheduled deliveries have to be approved by Unified managers before the Employer can perform any lumping services.

¹¹ Among other things, the palm pilot allows the team leaders to process certain payments by delivery drivers.

use the fee schedule and their experience of how much work is involved to set a fee.¹² At the end of the team leaders' respective workdays, they deposit their own team's daily revenues (usually between \$500 and \$3,000) in a safe located in the Site Manager's office, where the team leaders also return their individual briefcases.

Additionally, team leaders perform lumping services for a significant portion of their work day from 20% to 88%. The remainder of the day is devoted to team leader functions relating to the collection of fees from incoming drivers and paperwork functions, including tracking work schedules for the lumpers and noting their break and lunch times on a daily attendance report, which report the Employer uses to calculate wages for the lumpers. On occasion, as discussed below, team leaders also fill out employee discipline notices.

Team leader Antonio Sanchez, whose shift begins at 11 a.m., assists with completing the daily work load as needed. At the time of the hearing, Sanchez did not have any lumpers assigned to him and the record does not clearly show how many lumpers he utilizes (from other team leaders) when completing his shift assignments. Sanchez did have one lumper on his team prior to the petition date but work had declined to such an extent that the one lumper was no longer needed. Consequently, the Site Manager initiated a dialogue to find a possible slot for that lumper, who eventually was assigned to an early shift at the suggestion of a team leader.¹³ Sanchez also coordinates with Unified personnel to make sure everything has been completed in a satisfactory manner and that the Employer's work area is clean. In this regard, Sanchez completes an Employer check list to make sure all of the day's tasks are satisfactorily completed.

2. Assign

The record reveals that the lumpers' work location, shifts, and overall duties are assigned by the Employer rather than team leaders.¹⁴ Those shifts are noted above and generally have fixed starting times and workdays, which could be a Monday through Friday shift or a shift that includes working Sunday. However, the record reveals that the team leaders play a role in lumpers' breaks and lunch times, overtime, and sending employees home early when there is insufficient work.

With respect to breaks and lunch times, the record discloses that those are largely determined by the work load and Unified's desire to maintain a steady schedule of unloading in order to avoid delays, interruptions, or bottlenecks. Indeed, the team leaders will alter breaks and lunch times pursuant to instructions from Unified. However, the record does not detail the frequency with which break and lunch times are altered. Moreover, the record does not clarify the full extent and nature of the factors team leaders may consider in altering these times.

As for sending employees home early, the record reveals that about 57 trailers typically arrive at the facility every week day. Wednesday is noted as a slow day, probably 30% less than

¹² The record does not show how much the Employer's fee schedule may be varied by the team leaders. However, neither party contends this function is managerial in nature and thereby grounds to exclude the team leaders from the unit as managers.

¹³ The record does show one isolated instance of a transfer made at an employee's request and approved by the site managers at the two involved sites. However, neither party asserts that the team leaders possess the 2(11) authority to transfer employees, and I find insufficient evidence exists in the record to establish the possession of such authority.

¹⁴ The record reveals that Unified provides the Employer and team leaders with freight delivery schedules that detail the time, date and dock for deliveries. It also appears that the team leaders receive information that details the nature and extent of the freight being delivered.

other days of the week, and Sundays are busy on the perishable side of the Employer's operation at the Unified warehouse. As noted above, lumping work may also vary on any given day due to late, early, or unplanned freight arrivals. However, the record does not detail the extent of such arrivals. Further, the recent economic decline has adversely impacted the length of employees' workday, requiring the Employer to reduce employees' hours or workday and refrain from hiring at Unified warehouse. In sum, the record reveals that the decision to send employees home early is largely dictated by available work.

Regarding overtime, the record further reveals that lumpers in the perishable side of the Employer's operations generally start earlier and finish their work before the grocery side completes their work. Consequently, employees working in the perishable side will be requested by team leaders to help out in the grocery side, when the latter's side is dealing with a relatively heavy volume of delivered items. While the team leaders decide who is to stay and who is to shift areas to help out, those decisions are based on work volume and are largely self-determinative, *i.e.*, when the work for the day is done, available lumpers go home, and when one area is overloaded and another is less busy or out of work, available lumpers are shifted to accommodate department work loads. The extent of overtime was not detailed in the record by testimony or payroll records. Moreover, due to the economic decline and other factors, overtime is apparently or relatively non-existent at the Unified warehouse. So, while team leaders rarely ask specific lumpers to help out and move to other departments, lumpers are essentially fungible.¹⁵

There is record testimony of overtime at the three other facilities in the Puget Sound area and team leaders at those facilities do decide when lumpers are asked to work overtime. This is a distinguishing feature of Fred Meyer and Safeway's operations in contrast to the operations at Unified's warehouse, which services independent grocers. However, even at Fred Meyer and Safeway sites, the team leaders attempt to equalize the number of hours worked by lumpers when scheduling overtime and that overtime is largely dictated by the actual delivery schedules each day.

There is evidence that on one occasion Unified requested four additional lumpers to work a Sunday to meet an expected heavy delivery schedule. In that instance, a team leader consulted with Site Manager Farfan. During that consultation Farfan instructed the team leader to make Unified happy, without specifying how many extra lumpers should work. The team leader selected two lumpers with produce experience to work that day, not four total. This is the only instance in the record showing a requirement for bringing in extra employees on their off-day. Moreover, the record does not detail the factors the team leader considered in selecting two versus four lumpers or in selecting the two lumpers from the perishable side.

3. Responsibly Direct

There is no question that the team leaders have lumpers under them performing unloading, sorting, and repacking work in the various dock areas at the Unified location. As for whether the team leaders decide what job shall be undertaken next and who shall do it, the record reveals the work generally performed by lumpers is relatively routine and largely unskilled, although they do have to be able to proficiently operate equipment such as fork lifts, pallet jacks and similar equipment. However, even for the operation of this equipment, the training lasts no more than a day.

Moreover, the record reveals that at the outset of a given shift, the lumpers appear to generally know what to do and proceed accordingly during the workday. When there are multiple

¹⁵ The only exception to this may be the operation of specific equipment as discussed, *infra*.

vehicles to unload or an unusual problem, the team leaders purportedly set the priorities by directing individual lumpers what job to perform next in order to prevent bottlenecks and make efficient use of their time. However, these directions are dictated by four established business needs, and are not subject to discretion. First, the directions are largely based on a "first in, first out" arrival basis for loads. Second, perishables receive priority when it comes to unloading, sorting, and repacking. Third, Unified may direct which loads to undertake next or directs when unscheduled loads are to be provided lumping services. Fourth, as noted above, the delivery schedules generally dictate the nature and extent of the loads arriving each day.

Notwithstanding these business needs, the Employer failed to provide concrete examples of team leaders directing lumpers regarding what job shall be undertaken next and who shall do it, nor does the record detail how frequently such directions occur. Rather, Employer witnesses testified in a conclusory fashion, without citing concrete examples, of team leaders directing what jobs will be undertaken next and who shall do it, based on the team leaders' knowledge of the lumpers' proficiency in operating the equipment and individual abilities to unload efficiently. Further, the Employer failed to identify or quantify who those lumpers were in relation to specific instances of such direction.

As for whether the team leaders "responsibly" direct the lumpers, the record reveals that the Employer created a job description for the team leaders in April 2010.¹⁶ That job description states ". . . the Team Leader is responsible for guiding and coordinating warehouse employees and related resources. . . ." and is "Responsible for cash payments and checks received." Among other things, the job description also delegates to the team leader the authority to initiate disciplinary action as necessary and to submit discharge recommendations. However, the record is devoid of evidence showing that there is a prospect of adverse consequences for the team leaders if they do not properly direct the lumpers. Specifically, the Employer introduced no evaluations or discipline of team leaders showing the Employer held them accountable for the performance of the lumpers.¹⁷

4. Discipline

The record reveals that the Employer has implemented and enforced a progressive disciplinary system. Specifically, the first disciplinary action could come in the form of an oral warning or the first warning could result in a "first written warning." Altogether, three written warnings culminate in termination of employment.¹⁸ The job description, documented warnings and testimony reveals that the team leaders do have some responsibility for initial discipline such as written warnings. The "Employee Discipline Notice" form utilized by team leaders to issue written warnings lists the types of "violation" warranting a discipline notice.¹⁹ However, the documentary evidence of warnings reveals that the team leaders issued 7 notices: 5 for attendance/tardiness and 2 for damage to merchandise or property. These notices are placed in

¹⁶ The Employer did not provide evidence establishing whether this job description had been distributed to all team leaders in the Puget Sound area and/or whether all team leaders had been notified in some fashion that the duties and responsibilities listed in the job description had been or would be delegated to the team leaders.

¹⁷ There is also no testimony showing that the lumpers understand or have been informed that they must follow the team leaders' instructions or suffer consequences.

¹⁸ I also note that the same system provides for possible suspension along the path of written warnings.

¹⁹ Namely: attendance/tardiness; rudeness or unprofessional conduct; unsatisfactory performance; damage to merchandise or property; violation of policy or procedure; insubordination; violation of safety rules; and "other."

the disciplined employees' respective personnel files.²⁰

The Employer's Regional Operations Manager, Jason Giuliany, testified that all discipline ultimately must be approved by the Site Manager, who reviews the discipline and may conduct a counseling session with the team leader to show him the areas where he could have done better and/or the Site Manager may elevate the issue of discipline to a full counseling session by bringing in the team leader and the lumper to address the situation.

i Attendance/tardiness

Four of the five employee discipline notices for attendance/tardiness, were issued between May 2009 and January 2010, and were classified as first warnings and issued by team leaders. However, about 2 months prior to the hearing in this case, Site Manager Farfan issued a directive to team leaders to crack down on tardiness by issuing a written warning to any lumper who arrived late to work, with no late arrival grace period. The record does not precisely define when this "crackdown" was initiated, but there does not seem to be any discretion with regard to its enforcement.

One additional warning concerned a no-show situation where the lumper was given a suspension. He was also the recipient of one of the tardiness warnings about 3 months prior to the no-show. The record is clear that the team leader involved, Miguel Lizarraras, had been instructed by the Site Manager to impose a suspension on that particular lumper and Lizarraras had no discretion other than a clerical reporting function in the imposition of the discipline in this situation.²¹ The record reveals that team leader Lizarraras' testimony and recall of the circumstances surrounding this disciplinary incident was significantly better than Site Manager Farfan's recall, which lacked detail.

Prior to the Site Manager Farfan's crackdown on tardiness, team leaders may have had some discretion whether to issue a tardy warning. In minor instances, they could decide that the tardiness was isolated or not worth pursuing. Team leaders had some discretion issuing an oral warning versus documenting the tardiness in written form. However, the record does not reveal concrete and detailed examples to clearly demonstrate this exercise of discretion at the Unified warehouse. Regardless, whatever discretion existed has been eliminated in recent months by the Site Manager's clear direction to issue warnings for all tardy violations without exception.²² Moreover, the Employer's Regional Operations Manager, Jason Giuliany, testified that the Employer has an Employer-wide standard requiring a warning for being late by 5 minutes or more.

ii Damage to Merchandise or Property

The record reveals two separate instances in June 2010 when two team leaders issued warnings to lumpers for damaging merchandise at the Unified location. However, the record does provide the details or circumstances underlying those warnings so as to demonstrate what if any independent judgment the team leaders may have used when issuing the warnings. Thus, it

²⁰ The record further reveals that an employee was sent home for a day by a team leader at Fred Meyer/Puyallup for insubordination but beyond this, there are no other details in the record regarding this particular discipline.

²¹ Lizarraas has been employed by the Employer at the Unified warehouse for about 2 years and was promoted to team leader within 2 months of his hire.

²² In at least one instance, site manager Farfan independently investigated a team leader's recommendation for discipline concerning absenteeism and overturned the recommendation because the lumper in question had a doctor's excuse.

cannot be gleaned from the record whether team leaders must report all forms of damage regardless of the extent and nature of the damages or whether they independently may judge what constitutes appropriate circumstances for issuing a warning of this nature. For instance, could the team leader ignore damage for which the lumper was not at fault, or where there were mitigating circumstances supporting the lumper, or where the damages were relatively trivial – these questions are not addressed in the record by concrete evidence.

The Employer points to incidents at the non-Unified locations as showing the disciplinary authority of team leaders. Specifically, one lumper was discharged for stealing product at the Fred Meyer/Puyallup worksite and another employee at the Unified warehouse was initially suspended and later terminated in 2004 for eating produce (peanuts), but this latter incident occurred well prior to the Employer commencing operations in 2007.²³

5. Effectively Recommend Discipline and Discharge

While the Employer appeared to limit its contentions regarding the supervisory authority of the team leaders to the Section 2(11) indicia of assign, responsibly direct and discipline, I note in the Employer's brief, it now appears to be adding the indicia of effectively recommending discipline and discharge. Namely, the Employer cites an instance where a team leader at the Employer's Puyallup worksite suspended and recommended discharge of a freight handler for eating produce in 2004, a time prior to the Employer commencing operations in 2007. Other cited examples of purported effective recommendation included stealing, and excessive tardiness/absences. However, no documentation of this discipline was introduced in the record, and it is clear that the suspensions and terminations involved Site Managers and Human Resources but the details of their respective roles in that discipline is also absent from the record. Moreover, Regional Operations Manager Giuliany testified that the Site Managers do not always follow the recommendation of the team leaders as to any discipline that they may issue.

6. Secondary Indicia

For significant periods of time, team leaders are the highest ranking individuals present at the Unified warehouse. This occurs Monday through Friday, as one shift begins at 1 or 2 a.m. and Site Manager Farfan does not arrive until 8 a.m. Further, Farfan also does not generally work on Sundays. While team leaders have telephonic access to Farfan, the record does not disclose when and under what circumstances team leaders would telephone Farfan when he is not at the warehouse.

The ratio of team leaders to lumpers varies. For instance, in the perishable side's 4 departments, there are 3 team leaders for 9 lumpers until 8 a.m. when Farfan starts working. The record does not indicate what DeLeon's hours are, but if he is assisting Farfan, their shifts may be similar. The grocery and repack departments respectively are assigned one team leader for the shift, which runs from 5 a.m. until late morning, when an additional team leader arrives at 11 a.m. to handle overflow and late deliveries as well as to ensure Unified is satisfied with the Employer's work that day.

Team leaders also perform lumper work during a portion of their workday but, as stated earlier, testimony discloses that such work ranges from about 20% to 88% of the team leaders' respective workdays. Specifically, DeLeon testified he spent about 50% of his time performing lumper duties when he was a team leader. One of the current team leaders at Unified testified he

²³ With respect to discharge, the parties do not dispute that those decisions rest with Site Managers and the Employer's Human Resources department.

spends 7 out of 8 hours performing lumber work, while the Regional Operations Manager estimated that team leaders spent about 20% of their time performing lumber work. Regardless, it is clear that team leaders do perform lumber work and also spend time on other matters such as representing the Employer in dealings with the incoming drivers, handling transactional paperwork, and preparing paperwork documenting hours worked by the lumpers. Team leaders are also the first point of communication between the Employer and Unified in the dock areas.

As set forth earlier, team leaders have a standup podium and they utilize a briefcase containing schedules, a palm pilot and other paperwork/forms. They can also use cell phones to communicate with each other and are paid \$2 more per hour more than the lumpers are paid.

Team leaders also serve a ministerial function in noting and reporting accidents and injuries. Specifically, team leaders complete a report of injury form which contains the facts and other data relating to a specific event. This event may be investigated by the Site Manager and possibly lead to further adverse actions, but the record provides no concrete examples of such a sequence of events.²⁴

IV. ANALYSIS

A. General Legal Standards

The record evidence and the parties raise one central issue as to the supervisory status of the team leaders. The Employer contends that the team leaders possess indicia of supervisory authority, as they have the authority to assign, responsibly direct, discipline, and/or to effectively recommend discipline or discharge, as defined in Section 2(11) of the Act. Accordingly, the team leaders should be excluded from the unit. Petitioner argues that the team leaders do not possess such authority and are employees properly included in the appropriate unit.

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well settled that Section 2(11) of the Act is to be read in the disjunctive and that possession of any one of the enumerated indicia establishes supervisory status as long as the performance of the function is not routine or clerical in nature but, rather, requires a significant degree of independent judgment. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Oakwood Health Care, Inc.*, 348 NLRB 686 (2006). In addition, the burden of proving supervisory status is on the party alleging that such status exists. *Dean & DeLuca of New York, Inc.*, 338 NLRB 1046, 1047 (2003). As a general principle, the Board has exercised caution not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

²⁴ There is no record evidence establishing that team leaders attend management meetings.

B. Assign

The Board has defined assign as the act of designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, *i.e.* tasks, to an employee. Further, to assign for purposes of the Act, refers to the designation of significant overall duties to an employee, not the ad hoc instruction that the employee perform a discrete task. *Oakwood Healthcare, Inc.* 348 NLRB 686, 689 (2006).

Here, the record establishes that the team leaders do not appoint lumpers to their regular departments, shifts, or to their overall duties. Instead, such terms are largely set by the Employer and are relatively fixed. However, the Employer asserts that team leaders assign lumpers' breaks and lunch times, overtime, and may send employees home early when there is insufficient work. While the record reveals that the team leaders play a role in such matters, the record also reveals that they do not use independent judgment in that role.

The Board has defined the statutory term independent judgment in relation to two concepts. As initial matter, to be independent, the judgment exercised must not be effectively controlled by another authority. Thus, where a judgment is dictated or controlled by detailed instructions or regulations, the judgment would not be found to be sufficiently independent under the Act. The Board further found that the degree of discretion exercised must rise above the routine or clerical in order to constitute independent judgment under the Act. *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006).

Regarding changing breaks and lunch times, the record reveals that such changes are largely dictated by the scheduled deliveries and/or by Unified's desire to maintain a steady schedule of unloading in order to avoid delays, interruptions, bottlenecks, or problems associated with unexpected variations in deliveries. Indeed, the Employer is solicitous of Unified's wishes to change breaks and lunches, in order to ensure that it is satisfied with the Employer's lumping services. Essentially, this covers the range of reasons for changing break and lunch times. Thus, the record reveals insufficient evidence to establish that the team leaders control the circumstances when break or lunch times will be altered. Further, the mere modification of lunch times and breaks to meet Unified's instructions is also routine. See *Sunset Nursing Homes* 224 NLRB 1271, 1274 (1976). In sum, the team leaders do not use independent judgment to change employees' break and lunch times.

With respect to overtime, the Employer asserts that the team leaders use independent judgment to grant employees overtime. However, the record reveals that any overtime that may be provided to employees is largely dictated by the freight delivery schedule, which provides sufficient details allowing the Employer to adequately staff its shifts in the first place. When unexpected deliveries occur, Unified quickly asserts control over how the Employer will handle such occurrences. Finally, it should be noted that the record lacks concrete evidence showing that the team leaders control the circumstances over granting overtime. This may be due in large part to the recent economic downturn that has dramatically reduced unit employees' work hours at the Unified warehouse. See *Franklin Home Health Agency*, 337 NLRB 826, at 830 (2002) (The burden is upon the party alleging supervisory status to establish that the putative supervisor exercises independent judgment by submitting "concrete evidence showing how ... decisions are made"). In light of the above and the record as a whole, I find that the Employer has failed to establish that the team leader use independent judgment in assigning overtime.

As for sending employees home early, again, these determinations are dictated by available work, detailed delivery schedules, and by whose work is finished. Thus, these situations

are largely predictable in light of the circumstances under which lumber work is performed at the Unified warehouse. While the Employer asserts that the team leaders factor in employee expertise and efficiency when deciding who goes home early and who stays and continues to work, the reality is that the work performed is routine in nature and that employees skills are fairly fungible. This is also true for employees with equipment operating skills, as the training for operating the equipment lasts no more than a day.

Further, the record lacks concrete examples of any team leaders truly using independent judgment to select certain employees over other employees to remain working while others are sent home. Moreover, testimony reveals that the Employer attempts to equally distribute work hours to employees and this would negate the use of independent judgment for not only sending employees home early but in those rare circumstances when overtime may be available to a limited number of employees. In short, I find that the team leads do not use independent judgment to send employees home early from work when work is unavailable.

C. Responsibly Direct

The Employer asserts that the team leaders responsibly direct. The Board defined the statutory term responsibly to direct as follows: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both responsible . . . and carried out with independent judgment." *Oakwood Healthcare, Inc.*, 348 NLRB at 692. Further, with responsible direction, the Board said, "We agree with the circuit courts that have considered the issue and find that for direction to be 'responsible,' the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one performing the oversight if the tasks performed by the employee are not performed properly." *Oakwood Healthcare, Inc.*, 348 NLRB at 692.

Here, again, the record reveals that the lumpers' work is fairly routine and predictable in light of Unified's schedule of deliveries, which dictates the order of work at the warehouse. When unexpected events occur (late, early, or unplanned load arrivals), Unified essentially dictates what load will be undertaken next. As to the particular lumpers who will handle such unexpected loads, that is largely dependent on who is available.

The Employer asserts that some employees are better operators of equipment (fork lifts and pallet jacks) and/or more efficient at performing lumber work. However, the record reveals that the operation of the equipment is not complicated and the standard for being efficient in lumber work should be relatively simple to achieve in the light of the routine nature of the work.

The Employer failed to produce evidence showing the prospect of adverse consequences for team leaders if lumpers fail to properly perform their work. Specifically, the Employer provided no documentary evidence establishing that the team leaders have been evaluated and/or disciplined in connection with their purported direction of employees. The lack of such evidence supports finding that the Employer does not hold the team leaders accountable for their direction of lumpers. Additionally, there is insufficient evidence establishing that the lumpers have been informed of adverse consequences should they fail to follow the team leaders' directions. This further undercuts the Employer's argument that the team leader responsibly directs employees.

In light of the above and the record as a whole, I find that the team leaders do not possess

the authority to responsibly direct employees.²⁵ See *Dean & Deluca New York, Inc.*, 338 NLRB 1046, fn. 15, citing *Jordan Marsh Stores Corp.*, 317 NLRB 460, 467 (1995).

D. Discipline/Effective Recommendation of Discipline or Discharge

The Employer argues that the team leaders possess the authority to discipline employees. In particular, the Employer presented evidence showing that team leaders may initiate the Employer's disciplinary process. However, the Board has held that purported supervisors must still use independent judgment when disciplining employees. See *Sheraton Universal Hotel*, 350 NLRB 1114 (2007).

In this case, the team leaders do not use independent judgment. Specifically, under the Site Manager Farfan's new directive, there is no discretion in tardiness cases, in that all employees who show for work late are to be issued a written warning regardless of the circumstances or how late the arrival is. That is, there is no grace period for being even a minutes late. Thus, with respect to attendance/tardiness violations, the team leaders are merely performing reporting functions in reporting such tardiness to the Employer.

Similarly, there is no evidence that team leaders use independent judgment for issuing warnings dealing with damage to merchandise or property. Specifically, the Employer failed to provide concrete evidence showing how the decisions were made to issue the two warnings in the record covering damage to merchandise and property, whether the team leaders have authority to ignore minor damage, or whether the team leaders must report any all damage, regardless of the circumstances, much as they must report all tardiness, without exception.

While the Employer submitted evidence regarding a team leader's involvement in disciplining an employee for insubordination at Fred Meyer's warehouse in Puyallup, no further details or documents were provided detailing the circumstances of how the decision to discipline was reached in that matter.²⁶ For instance, there is no evidence revealing whether the team

²⁵ The cases cited by the Employer in its argument concerning assignment and responsible direction are not applicable to the circumstances of the instant matter. In *Austal USA, L.L.C.*, 349 NLRB 561 (2007), the issue was the supervisory status of one individual. There, the Board found that the authority to assign or responsibly direct was routine or clerical in nature. There was only conclusory testimony without evidence regarding the factors balanced by the lead in either assigning or directing employees. In *American River Transportation Co.*, 347 NLRB 925 (2006), the putative supervisors at issue were river pilots who instructed the two-person crew as to placement of lookouts, etc. These assignments were necessary for the safe passage of the boat and the tow. Thus, the discretion there is distinguishable from the case before me. Additionally, the Employer cites as support, *DST Industries*, 310 NLRB 957 (1993). There, the alleged supervisors directed employees who were engaged in very sophisticated detailed work in preparing prototype models for Ford Motor Corp. The work was very skilled and detailed and the assignment of tasks and direction of employees were based on the leads' skill, experience and analysis of complicated technical factors necessary to complete the work. Here, on the other hand, lumpers' work is routine in nature and simply does not rise to the level of the work at issue in *DST Industries*.

²⁶ The Employer cites a series of cases in support of its position that the team leaders' involvement in discipline establishes their status as supervisors. However, these cited cases are distinguishable as noted below.

In *Heartland of Beckley*, 328 NLRB 1056 (1999), LPNs working at a nursing home issued warnings to CNAs pursuant to a progressive disciplinary process. The record in that case revealed concrete evidence establishing that the LPNs, unlike the team leads in the instant case, used independent judgment in deciding whether to issue a written warning, oral warning or to simply chide the CNAs for a range of conduct. In *Oak Park Nursing Care Center*, 351 NLRB 27 (2007), LPNs had similar discretion in the discipline of CNAs, as the LPNs in *Heartland Beckley*. Additionally, the LPNs in *Oak Park*, possessed the authority to, in their

leader used independent judgment in deciding whether to suspend the employee, rather than issuing a written warning, or whether the team leaders have discretion in issuing an immediate suspension when an employee refuses to work. While I recognize such details may appear burdensome to a party alleging supervisory status, I also recognize that these burdens are justified as a finding of supervisory status removes an individual from the protection of the Act. Accordingly, a lack of such concrete evidence is construed against the party asserting supervisory status.²⁷ See *Elmhurst Extended Care Facilities*, 339 NLRB 535 fn. 8 (1999).

E. Secondary Indicia

Both parties raise secondary indicia as a factor to be considered in making this determination. The Employer argues that the indicia show the team leaders have significantly different duties and responsibilities than the lumpers, pointing to the wage differential, dealing with drivers, handling of money, forms processing, and other different aspects of the team leader's position.²⁸ The Petitioner argues that the employee to supervisor ratio is abnormally low, suggesting that the team leaders are not 2(11) supervisors. However, while secondary indicia may be relevant to supervisory status determinations, such indicia are not dispositive in the absence of a showing of one of the enumerated Section 2(11) criteria. *Training School of Vineland*, 332 NLRB 1412 (2000). Because I have determined that the team leaders do not possess any of the enumerated indicia of supervisory authority as that term is defined in Section 2(11) of the Act, the existence of secondary indicia is not dispositive of the issue.

discretion, lay out the factual basis for a warning and then suspend without further investigation. This type of authority goes beyond what is present in the case before me.

In *Bredero Shaw*, 345 NLRB 782 (2006), the individuals at issue possessed the authority to send employees home without consulting a higher ranking official or without an independent investigation by superiors. Here, the record lacked concrete evidence to establish that the team leaders possessed similar authority to suspend. *Progressive Transportation Services, Inc.*, 340 NLRB 1044 (2003), concerned a dispatcher who only recommended discipline but her recommendations were almost always followed by management. Here, the record was devoid of evidence establishing the authority to recommend discipline or discharge. Likewise, in *Venture Industries*, 327 NLRB 918 (1999), the Board found supervisory authority where recommendations were followed 75% of the time. Again, the instant record does not support a similar finding for the team leaders.

In light of the above and the record as a whole, the Employer's cited cases fail to support its arguments in the case before me.

²⁷ As for the Employer's assertions that team leaders effectively recommend discipline or discharge, I similarly find that the record lacks sufficient concrete evidence detailing such recommendations. In particular, the roles of the Site Managers and Human Resources clearly would have been involved, but were not detailed in the situations involving the purported recommendations. Thus, it is unclear whether the recommendations were followed without independent investigations by either Site Managers or Human Resources. In sum, I find that the team leaders do not effectively recommend discipline or discharge.

²⁸ Employer further argues that a finding that the team leads are not supervisors means there are no supervisors present at the Unified warehouse for significant periods Monday through Friday and all through the workday on Sunday. In support of this argument, Employer cites *Pennsylvania Truck Lines, Inc.*, 199 NLRB 641 (1972). There, the purported supervisors were dispatchers who were in charge on weekends when their terminal managers were not present. The employer provided trucking services for a railroad and operated numerous terminals that were open on the weekend. Failure to find the dispatchers were supervisors would have meant there were about 100 employees at a terminal without supervision. Here, those numbers are not present as there are about nine lumpers and three leads working at the Unified warehouse when the Site Manager is scheduled off from work. I also note the Site Manager is available by telephone. In light of the above and the record as a whole, the Employer's cited case fails to support its arguments in the case before me.

IV. CONCLUSION

Based on the foregoing and the record as a whole, I find that the Employer has failed to meet its burden of establishing that the team leaders possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act. In particular, I find that the team leaders do not possess authority to assign, responsibly direct, discipline, or to effectively recommend discipline or discharge. Therefore, I shall include team leaders in the unit.

Accordingly, I shall direct an election in the following appropriate unit ("the Unit"):

All full-time and part-time lumpers and team leaders employed by the Employer at the Unified Grocers Distribution Center located in Tukwila, Washington; excluding guards and supervisors as defined in the Act.

There are approximately 25 employees in the Unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brother of Teamsters, Local Union 117**.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174 on or before **July 23, 2010**. No extension of time to file this list may be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

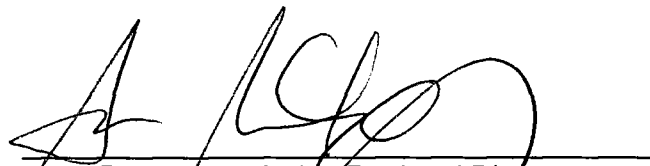
B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **July 30, 2010**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.²⁹

DATED at Seattle, Washington on the 16th day of July, 2010.



Anne Pomerantz, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

²⁹ To file a request for review electronically, go to <http://www.nlr.gov> and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary, and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, <http://www.nlr.gov>.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ROADLINK USA, INC.

Employer

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 117, affiliated with
the INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

Case 19-RC-15320

DATE OF MAILING: July 16, 2010

AFFIDAVIT OF SERVICE OF *DECISION AND DIRECTON TO ELECTION*


I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by facsimile and first-class mail upon the following persons, addressed to them at the following addresses:

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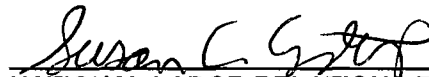


Vicky Perkins, Secretary

Subscribed and sworn to before me

on July 16, 2010.

DESIGNATED AGENT:



NATIONAL LABOR RELATIONS BOARD

BOARD EXHIBIT 1(C)